IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

THURSDAY, THE 16TH AUGUST 2007 / 25TH SRAVANA 1929

WP(C).No. 31644 of 2004(P)

OS.253/2003 of II ADDL.SUB COURT,KOZHIKODE
.....

PETITIONER:

K.ABDUL GAFOOR, S/O.KATHIRIKOYA,
AGED 43 YEARS, RESIDING AT HOUSE.NO.13/1195,
THRIKKOVIL LANE, VALAVIL, KOZHIKODE-1,
NAGARAM AMSOM AND DESOM, KOZHIKODE TALUK.

BY ADV. SRI.K.P.DANDAPANI

RESPONDENTS:
----

1. **SHRI T.A.SEBASTIN, PUNCHIRI GOLD COVERING WORKS, VKK MENON ROAD, KALLAI, KOZHIKODE-1.**

2. **SMT.THANKAMMA MATHEW, W/O.T.A.SEBASTIN, GOVT. M.L.U.P.SCHOOL, MOORIYAD, VALAYANAD AMSOM , DESOM, KOZHIKODE TALUK.**

BY ADV. SRI.C.P.MOHAMMED NIAS for R1 & R2

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 16/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WPC.NO.31644/2004 P

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: **COPY OF RECEIPT DTD. 27/06/2000 EXECUTED BY THE RESPONDENTS IN FAVOUR OF THE PETITIONER.**

EXT.P2: **COPY OF ORDER DTD. 5/10/2004 PASSED BY THE SUBORDINATE JUDGE'S COURT, KOZHIKODE IN O.S.NO.253/2003.**

/TRUE COPY/

P.A.TO JUDGE

KSS

PIUS C. KURIAKOSE, J.

W.P.(C) NO. 31644 of 2004

Dated this the 16th day of August , 2007

JUDGMENT

Ext.P2 order by which the learned Subordinate Judge has construed Ext.P1 as a bond for the purpose of payment of stamp duty is under challenge.

2. Heard both sides. My attention was drawn by the learned counsel for the petitioner to the definition of the term 'bond 'in Section 2(a) of the Kerala Stamp Act. Counsel submitted that Ext.P1 is capable of being construed as an agreement. The learned counsel, relying on the judgment of this court in **Mathai Mathew v. Thampi (1989 (1) KLT 138),** submitted that construction of Ext.P1 as an agreement will be be more advantageous to the assessee.

3. Mr.C.P. Mohammed Nias, the learned counsel for the respondent submitted that the only construction which is possible on Ext.P1 is that the same is a bond. According to the learned counsel, Ext.P1 does not acknowledge any pre existing liability. On the contrary Ext.P1 which is written as a receipt is the document against which the payment is made. Counsel also submits that by all standards Ext.P2 order is a reasonable order and it will not be proper

to set aside the same invoking the supervisory jurisdiction of this court under Article 227.

3. I have gone through Ext.P1. I have also considered Ext.P1 in the light of the statutory definition of the term 'bond'. I am unable to agree with the learned counsel for the petitioner who blames the learned Munsiff for not having considered Ext.P1 as an agreement. There is no warrant for interfering with Ext.P2. Even as I confirm Ext.P2, I direct the learned Subordinate Judge to refer the suit to one of the Adalaths which is being conducted under the aegis of the Kozhikode District Legal Service Authority and explore the possibilities of settlement between the parties.

The writ petition is disposed of as above.

PIUS C. KURIAKOSE,
JUDGE.

Dpk